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Guidelines for Designation of Buildings of Architectural and Historic Importance

a handbook for
Municipal Councillors

Government
Publications

DEPOSITORY LIBRARY MATERIAL

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Kingston City Hall, built 1843-44 to designs by George Browne, was restored and renovated in 1973 by City of Kingston and its citizens with the assistance of a grant from the Ontario Heritage Foundation on behalf of the Province of Ontario.

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ADDENDUM **DEPOSITORY LIBRARY MATERIAL**

At the time of printing, the references in this guideline were to The Planning Act, Revised Statutes of Ontario, 1970. As of August 1st, 1981 The Planning Act, Revised Statutes of Ontario, 1980 became effective.

The references in this guideline to various sections of The Planning Act are as follows:

R.S.O., 1970

Section 29
Section 33
Section 33(11)
Section 35
Section 35b
Section 35b(1)
Section 35b(2)
Section 35b(3)
Section 35b(4)

R.S.O., 1980

Section 29
Section 36
Section 36(11)
Section 39
Section 41
Section 41(1)
Section 41(2)
Section 41(3)
Section 41(4)

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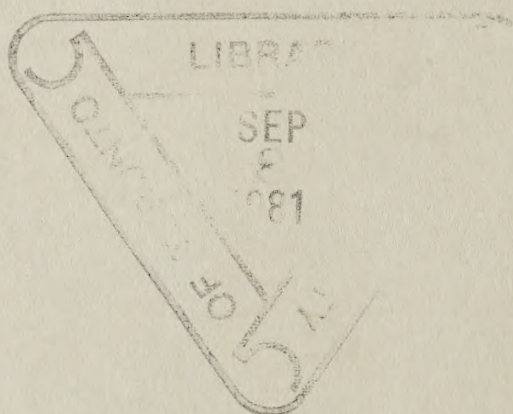
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A guide to Part IV of
The Ontario Heritage Act, 1974

Designation of Properties for Conservation
as Buildings of Historic or Architectural
value



Introduction

An Act to provide for the Conservation, Protection and Preservation of the Heritage of Ontario was proclaimed on March 5, 1975. The need for such legislation has been seen in a steadily growing public interest in Ontario's historic and architectural heritage during the last decade, particularly at the local level. Several municipalities have sought and obtained provincial legislation enabling them to control demolition of buildings of special significance.

Recognizing the merit of these concerns, the provincial government established the Ontario Heritage Foundation in 1967 to acquire historical buildings and administer them on behalf of the province. In addition a study was undertaken which analysed the province's historical background, identified conservation problems and recommended the general form of enabling legislation. A draft report in 1971, circulated to selected municipalities, historical societies, architectural conservancies and other interested bodies, drew overwhelming support for proposed conservation measures and the present legislation is the result.

The act also provides in Part III (Sections 24 and 25) for the creation of a Conservation Review Board in connection with architectural conservation. The review board is empowered to hold hearings and produce reports when a dispute arises between a municipality and the owner of a property designated by a municipality as being of importance either from a historical or an architectural point of view.

This pamphlet is intended as a guide to Part IV of the act, that part which enables municipalities to take local action for the conservation of certain buildings and properties. It is not intended as a substitute for the legislation itself but is to be used in conjunction with The Ontario Heritage Act, 1974.

1 Local Advisory Committee

A municipal council may pass a by-law to form a Local Architectural Conservation Advisory Committee of not fewer than five members to assist it on the designation of properties. As this subject is of a highly complex nature which merits continuous technical advice, it is strongly recommended that such a committee be established immediately council decides to develop conservation policies. (Section 28).

While it is not covered in the act, council would also be well advised before it takes any other action to ask its local advisory committee to prepare a detailed resume of those properties within the municipality which it feels should be designated as being of historical or architectural interest. The resume should contain not only the location of the property but also sufficient reason for designating such property. This would include an architectural description of the buildings on the property, the historical role of the property in the development of the community, etc. (For further guidance see Appendix A.)

2 The Register

Each municipality shall maintain a register of all properties designated under this part within the municipality. The register shall contain:

- a) a legal "metes and bounds" or "lot and plan" description of the property;
- b) the name and address of the owner;
- c) a statement of the reason for designating a property.

The clerk of the municipality will issue extracts from the register to any person upon payment of a prescribed fee. (Section 27).

3 Method of Designation

When a council intends to designate a property it must publish notice of such intention. Its notice will be served on the owner of the property, on the foundation and will be published once for each of three consecutive weeks in a newspaper having general circulation in the munici-

pality. The notice of intention to designate will contain:

- a) an adequate description of the property (street address, or lot and concession number);
- b) a statement of the reason for the proposed designation;
- c) a statement that notice of objection to the designation may be served on the clerk within 30 days of the date of the first publication of the notice in the newspaper of the municipality.

Where no notice of objection is received from the owner within 30 days after the date of first publication, the council may pass a by-law designating the property and shall cause a copy of the by-law together with the reasons for the designation to be registered in the proper land registry office and to be served on the owner and the Ontario Heritage Foundation, and in addition shall publish a notice of the by-law in a newspaper having general circulation in the municipality. At the end of the 30-day waiting period, the council may decide not to designate the property and in that case a notice of withdrawal must be served on the owner, the foundation and published in the local newspaper. (Section 29 — 1 to 4).

4 Objection to Designation

If anyone objects to designation of a property he shall serve notice of objection on the municipal clerk within 30 days stating the reasons for his objections and specifically detailing why the property should not be designated. In such case the council shall refer the matter to the Conservation Review Board. The review board, as soon as practicable, shall hold a public hearing to determine whether the property in question should be designated. The owner, the municipality, and any person who has filed an objection and such other persons as the review board may specify will be parties to the hearing. The hearing will be held in the municipality in question and notice of the hearing will be published in a local newspaper at least 10 days prior to the date of the hearing.

Within 30 days of the conclusion of the hearing or as soon as is practicable thereafter, the review board will make a report to the council setting out its findings and recommendations as to whether or not the property should be designated under the act. The review board will send copies of its report to all parties to the hearing.

After considering the report, the council without a further hearing can pass a by-law designating the property as described above or withdraw the notice of intention to designate as described earlier. In either case, the decision of the municipal council is final, regardless of the findings and opinions of the Conservation Review Board. A municipal by-law is **not** required to designate each property, thus one or **more** properties can be designated by a single municipal by-law, but each must be specifically identified and the proper procedures regarding notice must be followed for each property. (Section 29 — 5 to 14).

5 Repeal of By-law

A municipality may for various reasons decide to repeal a by-law or part thereof designating a property under this act. Before this is done the council shall consult with its local advisory committee, if any, and shall cause notice of its intention to repeal the by-law or part thereof to be given by the clerk of the municipality to:

- a) the owner of the property and the Ontario Heritage Foundation; and
- b) shall cause notice of such intention to be published in a local newspaper.

The notice of intention to repeal shall contain:

- a) an adequate description of the property;
- b) a statement of the reason for the proposed repealing of the by-law; and
- c) a statement that notice of objection to the repealing of the by-law may be served on the clerk within 30 days of the date of first publication.

Any person objecting to the repeal of the by-law shall serve notice of objection on the municipal clerk and the cycle described above, i.e., notification to the

review board, public hearing, and opinion of the board followed by the decision of the municipal council will again occur.

Where the council of a municipality passes a by-law repealing a by-law or part thereof designating property it shall cause a copy of the repealing by-law to be served on the owner, and the foundation, and a copy to be registered in the proper land registry office and publish a notice of such by-law in the local newspaper. In addition the council shall delete any reference to the property from the register. (Section 31).

6 Owner of Property Requesting Repeal of Designation

The owner of a designated property may request municipal council to revoke the designation of his property. After consulting its local advisory committee (where one exists) the council within 90 days shall:

- a) refuse the application and inform the owner and the Heritage Foundation; or
- b) agree to the application and pass a by-law repealing the by-law or part thereof designating the property and in this case will forward a copy of the repealing by-law to the owner and the foundation, remove reference to the property from the register, give notice of the repealing by-law in a newspaper within the municipality, and register the repealing by-law against the property in the land registry office.

Notice of the decision will be given to the Ontario Heritage Foundation. The 90-day period may be extended with the mutual agreement of the applicant and council, but if no reply is made within the 90-day period, council will be considered to have agreed to the application.

Where the council refuses the application of the owner he may, within 30 days, apply to the council for a hearing before the Conservation Review Board. Council will then refer the matter to the review board for hearing and report and publish notice of the hearing at least 10 days before the hearing. This hearing, like those described earlier, will take place within the municipi-

pality, shall be public and parties to the hearing shall include the council, the owner and such other persons as the review board may specify. Within 30 days after the conclusion of the hearing, the review board shall make its report known to council and shall send copies of its report to the other parties to the hearing. After considering the report the municipal council without further hearing shall:

- a) refuse the application and cause notice of its decision to be given to the owner; or
- b) consent to the application and pass a by-law repealing the by-law or part thereof designating the property and forward a copy of the by-law to the owner and the foundation, delete reference from the register, publish a notice in a local newspaper and register a copy of the repealing by-law in the proper land registry office, against the affected property.

Where the council refuses to pass a repealing by-law the property owner may not reapply to have the designation revoked for twelve months, except with the consent of the municipal council. (Section 32).

7 Alteration of a Designated Property

The owner of a designated property is not permitted to alter that property in a way that is likely to affect the reasons for designation which have been served on the owner and registered against the property in the local land registry office, without first asking for and obtaining in writing the consent of the municipal council. The owner shall make application, as approved by council, and this will be accompanied by detailed plans and whatever information the council may require. The owner will then be notified that his application has been received and the council, after consulting with the local advisory committee, will consider the application and within 90 days will:

- a) consent to the application;
- b) consent to the application upon certain terms or conditions; or
- c) refuse the application.

Notice of the decision will be given to the Ontario Heritage Foundation. This 90-day period may be extended with the mutual agreement of the applicant and council, but if no reply is made within the 90-day period, council will be considered to have agreed to the application.

Where a council consents to the application upon certain terms or conditions, or refuses the application, the owner may within 30 days apply to the council for a hearing before the Conservation Review Board. Council will then refer the matter to the review board for a hearing and report and publish a notice of the hearing in a local newspaper, at least 10 days prior to the date for such a hearing. The review board will, as soon as possible, hold a public hearing and the council, the owner and such other persons as the review board may specify will be parties to the hearing which will be held in the municipality. The review board will report its conclusions within 30 days.

After considering the report the council will either confirm or reverse its original decision with such modifications as it considers proper and notice of its decision will be served on the owner and the foundation and all parties concerned. Its decision is final. (Section 33).

8 Demolition or Removal of a Designated Property

No owner of a designated property shall demolish or remove any building or structure on the property unless he applies to the council of the municipality and receives consent in writing for such demolition or removal. The council after consultation with the local advisory committee will consider the application and within 90 days of receipt shall:

- a) consent to the application; or
- b) refuse the application and prohibit any work to demolish or remove any building or structure on the designated property for a period of 180 days.

Council will then:

- a) serve notice of its decision to the owner and the Ontario Heritage Foundation; and

b) publish this decision in a local newspaper.

Its decision is final.

During this delay period of 180 days, the council will attempt to conserve the designated property in one or more of the following ways or in any other way the council deems fit:

a) convince the owner he does not wish to demolish this important heritage property;

b) suggest alternate uses for the building;

c) offer assistance in integrating the heritage property within some larger scheme;

d) attempt to involve the Ontario Heritage Foundation in preservation of the building especially noting to the owner that tax savings are available to any donor giving property to the Ontario Heritage Foundation. Full information is available from the foundation;

e) attempt to convince the owner to sell the heritage property to the municipality or a purchaser who will preserve it;

f) subject to The Expropriations Act, pass a by-law providing for the expropriation of the property. (See also Section 11 below.)

Following the 180-day waiting period, the owner may proceed to demolish the designated building or structure provided he has the requisite demolition permits, etc.

Where the council agreed to the original application for demolition or where the period of 180 days has expired and the demolition **has actually been completed**, the council shall pass a by-law repealing the by-law or part thereof which designated the property and shall:

a) serve a copy of the repealing by-law on both the owner and the Ontario Heritage Foundation;

b) publish the repealing by-law in a local newspaper;

c) delete all reference to the property from the municipal register;

d) register a copy of the repealing by-law against the property in the local land registry office. (Section 34).

9 Previously Issued Permits, etc.

Note: Once the notice of intention to pass a by-law designating a property has been served on the property owner and has not been withdrawn, provisions of Sections 33 and 34 of the act (referring to alteration, demolition or removal of designated property) apply to the owner as if it were a designated property. Thus any permit issued prior to notice of intention to pass a designating by-law which permits alteration or demolition of the property concerned, is **void** where this alteration or demolition has not yet been **completed**. (Section 30).

10 The New Owner of the Designated Property

Every person who becomes the owner of a designated property is required within 30 days to inform the proper municipal clerk of a change of ownership and the address of the new owner. (Section 35).

11 Purchase, Lease or Expropriation

Council of the municipality may pass by-laws empowering it to purchase, lease, expropriate (subject to The Expropriations Act), or otherwise acquire a designated property and subsequently to sell, lease or dispose of the property under such terms and conditions as the council considers appropriate. (Section 36 — 1, 2).

12 Delegation

The council of a municipality that forms part of a county, a metropolitan, regional or district municipality may delegate the powers given to it under this act to the appropriate upper tier of local government. (Section 36 — 3).

13 Easements and Covenants

The Ontario Heritage Act, 1974 provides, for the first time that either a municipality or the Ontario Heritage Foundation may acquire easements in or impose covenants on real property in order to protect it. An easement may be defined as a less than fee simple interest in real property. It may be acquired by a municipality or the foundation either by purchase or donation. For example, by donation or for specific compensation, an owner of a heritage property may agree to retain intact and maintain the exterior of a structure and such out-buildings or amenities as are relevant to the history or design of the property. Such an agreement will be enforceable against all subsequent owners of the property. Detailed restrictions will be specified in such an agreement, e.g., the property owner may covenant not to alter the exterior design or change the colour of a particular building without permission of the owner of the easement. Entering into an easement or covenant is generally much less costly than the purchase of a fee simple interest in real property. It can be an effective method of achieving the desired protection for a heritage property at a fraction of the cost of outright purchase.

It is important to note that the common law position concerning the enforcement of easements and restrictive covenants has been completely changed by the act in regard to the foundation and municipalities generally. Accordingly, an easement or covenant will be registered against the real property effected in the proper land registry office and this easement or covenant will be enforceable even where the municipality or foundation owns no other land which would be accommodated or benefited by such easement or covenant. The easement or covenant which is entered into by a municipality may be assigned to any person or organization and the easement or covenant will continue to run with the real property and the assignee (e.g., a local heritage group) will be entitled to enforce the easement or covenant as if it were the municipality itself. (Section 37).

14 Inspection

A municipal council may authorize in writing any person to inspect property designated or property proposed to be designated where a notice of intention to designate has been served, at any reasonable time and upon producing proper identification. No one shall obstruct this properly authorized person in making his investigation. (Section 38).

15 Grants and Loans

A municipal council may pass by-laws providing for the making of a loan or grant to the owner of a designated property to pay in whole or in part the cost of alteration under terms and conditions set by council. The amount of any such loan may together with the interest rate be added by the clerk to the collectors role and collected along with municipal taxes, over a fixed period not exceeding five years. Until the amount is paid it shall be a lien or charge upon the land on which the loan was made. (Section 39).

16 Offences and Penalties

Every person who does any of the following is guilty of an offence:

- a) knowingly supplies false information on any application, statement, report or return required under this act or regulations;
- b) fails to comply with any order or other requirement made under this act;
- c) contravenes any provision of this act or its regulations.

On summary conviction, a person is liable to a fine of not more than **\$10,000** or to imprisonment for a term of not more than one year or both. The maximum penalty for a corporation is not \$10,000 but **\$50,000**. No person is liable for prosecution where a designated property has been altered for reasons of public health, safety or the preservation of the property providing that proper notification has been given to the appropriate municipal clerk.

Where alterations have been carried out to a designated property without the consent of the municipal council, the council in addition to any other penalty may restore the property as close as possible to its previous condition and recover the costs of such restoration from the owner of the property except:

- a) where, in the opinion of the council, the property is unsafe or incapable of repair; or
- b) the alteration has been carried out for reasons of public health or the preservation of the property. (Section 69).

NOTE: No prosecution for an offence under this act shall be instituted except with the consent in writing of the minister.

17 Delivery of Notice

Any notice required by this act shall be considered sufficiently given if delivered by hand or sent by registered mail to the last known address of the person concerned. If sent by mail the service will be deemed made on the seventh day after mailing unless that person establishes that acting in good faith through absence, accident, illness or other cause beyond his control he did not receive notice until a later date.

Any notice required to be published in a newspaper having general circulation in a municipality in which a property is located will be published in that newspaper once for each of three consecutive weeks.

18 Address of Heritage Foundation

For purpose of giving notice to the Ontario Heritage Foundation, mail should be addressed to:

Ontario Heritage Foundation
7th Fl., 77 Bloor St. W.,
Toronto, M7A 2R9

19 Address of Conservation Review Board

For purpose of referring matters to the board, mail should be directed to:

Conservation Review Board
7th Fl., 77 Bloor St. W.,
Toronto, M7A 2R9

APPENDIX A

Criteria for evaluating real property of Historic and/or Architectural value

The following criteria are designed to guide municipalities in evaluating buildings proposed for designation under The Ontario Heritage Act, 1974.

The significance of the building in illustrating or interpreting our heritage should be judged by the basic criteria of architectural merit and historical association. In general the buildings should illustrate effectively the broad architectural, cultural, social, political, economic or military patterns of our history or should be associated or identified with events or persons that have shaped that history in a significant way.

For instance:

— The building may have been associated with the life of an historic personage or have played a role in an important historic event.

— Again, a building may embody the distinguishing characteristics of an architectural type valuable for the study of a style or method of construction of its period or area or be a notable example of the work of an early master builder, an important designer, or a significant architect.

— Antiquity alone is not a sufficient basis for selection but it may be a factor if other more significant examples have disappeared.

— If the building forms an integral part of a section of character in a given community, its context and its contribution to that context may be of special value.

— Smaller structures may be as important as the mansions of the past.

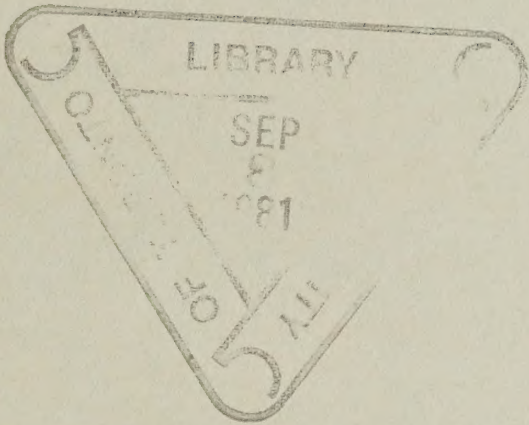
— The potential for illustrating our heritage should be such that it will be possible for the visitor to gain from the building an understanding of the architecture or history with which it is associated.

— The building and its site should possess integrity; that is, it should be known to be what it is represented to be and should include the site.

— A further consideration should be the extent of the original materials and workmanship remaining.

— Intangible elements of feeling, association and aesthetics, are also important factors.

— Architectural character should be considered on the basis of style, plan and sequence of spaces; use of materials and surface treatment and all other detailing, including windows, doors, lights, signs and other fixtures of such buildings, and the relation of such factors to similar features of the buildings in the immediate surroundings.



APPENDIX B

Aid to the use of this outline

This aid like the outline itself should be used in conjunction with a copy of the act.

If a municipality wishes to:

- | | |
|---|------------|
| 1 Designate a property. | see no. 3 |
| 2 Repeal a by-law under the act. | see no. 5 |
| 3 Purchase, lease or expropriate a designated property. | see no. 11 |
| 4 Acquire an easement or covenant. | see no. 13 |
| 5 Make a grant or loan. | see no. 15 |
| 6 Inspect a property. | see no. 14 |
| 7 Prosecute under this act. | see no. 16 |
| 8 Delegate its powers under this act. | see no. 12 |
| 9 Give notice to the Ontario Heritage Foundation | see no. 18 |
| 10 Refer a matter to the Conservation Review Board | see no. 19 |

If the owner of a designated property wishes to:

- | | |
|--|------------|
| 1 Object to designation. | see no. 4 |
| 2 Have designation repealed. | see no. 6 |
| 3 Alter a designated property. | see no. 7 |
| 4 Demolish a designated property. | see no. 8 |
| 5 Understand the status of outstanding permits. | see no. 9 |
| 6 Understand his responsibilities, upon becoming the new owner of a designated property. | see no. 10 |

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